

108TH CONGRESS
2D SESSION

H. R. 4518

To extend the statutory license for secondary transmissions under section 119 of title 17, United States Code.

IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 2004

Mr. SMITH of Texas (for himself, Mr. CONYERS, and Mr. BERMAN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To extend the statutory license for secondary transmissions under section 119 of title 17, United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Satellite Home Viewer Extension and Reauthorization
6 Act of 2004”.

7 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

Sec. 101. Extension of authority.

Sec. 102. Reporting of subscribers; significantly viewed and other signals; technical amendments.

Sec. 103. Statutory license for satellite carriers outside local markets.

Sec. 104. Study.

Sec. 105. Effect on certain proceedings.

TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

SEC. 101. EXTENSION OF AUTHORITY.

(a) IN GENERAL.—Section 4(a) of the Satellite Home Viewer Act of 1994 (17 U.S.C. 119 note; Public Law 103–369; 108 Stat. 3481) is amended by striking “December 31, 2004” and inserting “December 31, 2009”.

(b) EXTENSION FOR CERTAIN SUBSCRIBERS.—Section 119(e) of title 17, United States Code, is amended by striking “December 31, 2004” and inserting “December 31, 2009”.

SEC. 102. REPORTING OF SUBSCRIBERS; SIGNIFICANTLY VIEWED AND OTHER SIGNALS; TECHNICAL AMENDMENTS.

Section 119(a) of title 17, United States Code, is amended—

(1) in paragraph (1)—

(A) in the paragraph heading, by striking “AND PBS SATELLITE FEED”;

(B) in the first sentence, by striking “(3), (4), and (6)” and inserting “(5), (6), and (8)”;

(C) in the first sentence, by striking “or by the Public Broadcasting Service satellite feed”; and

1 (D) by striking the second sentence;

2 (2) in paragraph (2)—

3 (A) in subparagraph (A), by striking “(3),
4 (4), (5), and (6)” and inserting “(5), (6), (7),
5 and (8)”; and

6 (B) by amending subparagraph (C) to read
7 as follows:

8 “(C) SUBMISSION OF SUBSCRIBER LISTS
9 TO NETWORKS.—

10 “(i) INITIAL LISTS.—A satellite car-
11 rier that makes secondary transmissions of
12 a primary transmission made by a network
13 station pursuant to subparagraph (A)
14 shall, 90 days after commencing such sec-
15 ondary transmissions, submit to the net-
16 work that owns or is affiliated with the
17 network station—

18 “(I) a list identifying (by name
19 and street address, including county
20 and zip code) all subscribers to which
21 the satellite carrier makes secondary
22 transmissions of that primary trans-
23 mission to subscribers in unserved
24 households; and

1 “(II) a separate list, aggregated
2 by designated market area (as defined
3 in section 122(j)) (by name and street
4 address, including county and zip
5 code), which shall indicate those sub-
6 scribers being served pursuant to sub-
7 section (a)(3), relating to significantly
8 viewed stations.

9 “(ii) MONTHLY LISTS.—After the sub-
10 mission of the initial lists under clause (i),
11 on the 15th of each month, the satellite
12 carrier shall submit to the network—

13 “(I) a list identifying (by name
14 and street address, including county
15 and zip code) any persons who have
16 been added or dropped as subscribers
17 under clause (i)(I) since the last sub-
18 mission under clause (i); and

19 “(II) a separate list, aggregated
20 by designated market area (by name
21 and street address, including county
22 and zip code), identifying those sub-
23 scribers whose service pursuant to
24 subsection (a)(3), relating to signifi-

1 cantly viewed stations, has been added
2 or dropped.

3 “(iii) USE OF SUBSCRIBER INFORMA-
4 TION.—Subscriber information submitted
5 by a satellite carrier under this subpara-
6 graph may be used only for purposes of
7 monitoring compliance by the satellite car-
8 rier with this subsection.

9 “(iv) APPLICABILITY.—The submis-
10 sion requirements of this subparagraph
11 shall apply to a satellite carrier only if the
12 network to whom the submissions are to be
13 made places on file with the Register of
14 Copyrights a document identifying the
15 name and address of the person to whom
16 such submissions are to be made. The Reg-
17 ister shall maintain for public inspection a
18 file of all such documents.”;

19 (3) by adding at the end the following new sub-
20 paragraph:

21 “(D) STATES WITH SINGLE COMMERCIAL
22 FULL-POWER NETWORK STATION.—In a State
23 in which there is licensed by the Federal Com-
24 munications Commission a single full-power sta-
25 tion that was a network station on January 1,

1 1995, the statutory license provided for in sub-
2 paragraph (A) shall apply to the secondary
3 transmission by a satellite carrier of the signal
4 of that station to any subscriber in a commu-
5 nity that is located within that State and that
6 is not within the first 50 major television mar-
7 kets as listed in the regulations of the Commis-
8 sion as in effect on such date (47 CFR
9 76.51).”;

10 (4) by striking paragraph (8);

11 (5) by redesignating paragraphs (9) through
12 (12) as paragraphs (10) through (13), respectively;

13 (6) by redesignating paragraphs (3) through
14 (7) as paragraphs (5) through (9), respectively;

15 (7) by inserting after paragraph (2) the fol-
16 lowing:

17 “(3) SECONDARY TRANSMISSIONS OF SIGNIFI-
18 CANTLY VIEWED SIGNALS.—

19 “(A) IN GENERAL.—Notwithstanding the
20 provisions of paragraph (2)(B), and subject to
21 subparagraph (B) of this paragraph, the statu-
22 tory license provided for in paragraphs (1) and
23 (2) shall apply to the secondary transmission of
24 the signal of a network station or a supersta-
25 tion to a subscriber who resides outside the sta-

tion’s local market (as defined in section 122(j)) but within a community in which the signal of that station is determined to be significantly viewed under section 340 of the Communications Act of 1934.

“(B) LIMITATION.—Subparagraph (A) shall apply only to secondary transmissions of network stations and superstations to subscribers who receive secondary transmissions from a satellite carrier pursuant to the statutory license under section 122.”; and

(8) in paragraph (2)(B)(i), by adding at the end the following new sentence: “The limitation in this clause shall not apply to secondary transmissions under paragraph (3).”.

**SEC. 103. STATUTORY LICENSE FOR SATELLITE CARRIERS
OUTSIDE LOCAL MARKETS.**

Section 119 of title 17, United States Code, is amended as follows:

(1) Subsection (a) is amended by inserting after paragraph (3), as added by section 102 of this Act, the following:

“(4) STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.—

1 “(A) RULES FOR SUBSCRIBERS UNDER
2 SUBSECTION (e).—In the case of a subscriber of
3 a satellite carrier who is eligible to receive the
4 signal of a network station solely by reason of
5 subsection (e) (in this subparagraph referred to
6 as a ‘distant signal’), the following shall apply:

7 “(i) In a case in which the signal of
8 a local network station affiliated with the
9 same television network is made available
10 by that satellite carrier to the subscriber
11 pursuant to the statutory license under
12 section 122, the statutory license under
13 paragraph (2) shall apply only to sec-
14 ondary transmissions by that satellite car-
15 rier of the distant signal of such network
16 station to that subscriber—

17 “(I) if, within 60 days after re-
18 ceiving the notice of the satellite car-
19 rier under section 338(h) of the Com-
20 munications Act of 1934, the sub-
21 scriber elects to retain the distant sig-
22 nal; but

23 “(II) only until such time as the
24 subscriber elects to receive such local
25 signal.

1 “(ii) Notwithstanding clause (i), the
2 statutory license under paragraph (2) shall
3 not apply to any subscriber who is eligible
4 to receive the signal of a network station
5 solely by reason of subsection (e) unless
6 the subscriber’s satellite carrier, within 60
7 days after the date of the enactment of the
8 Satellite Home Viewer Extension and Re-
9 authorization Act of 2004, submits to that
10 television network a list, aggregated by
11 designated market area (as defined in sec-
12 tion 122(j)(2)(C)), that—

13 “(I) identifies that subscriber by
14 name and address (street or RFD
15 number, city, State, and zip code) and
16 specifies the distant signals received
17 by the subscriber; and

18 “(II) states, to the best of the
19 satellite carrier’s knowledge and be-
20 lief, after having made diligent and
21 good faith inquiries, that the sub-
22 scriber is eligible under subsection (e)
23 to receive the distant signals.

24 “(B) RULES FOR OTHER SUBSCRIBERS.—

25 In the case of a subscriber of a satellite carrier

1 who is eligible to receive the signal of a network
2 station under the statutory license under para-
3 graph (2) (in this subparagraph referred to as
4 a ‘distant signal’), other than subscribers to
5 whom subparagraph (A) applies, the following
6 shall apply:

7 “(i) In a case in which the signal of
8 a local network station affiliated with the
9 same television network is made available
10 by that satellite carrier, on the date of the
11 enactment of the Satellite Home Viewer
12 Extension and Reauthorization Act of
13 2004, to the subscriber pursuant to the
14 statutory license under section 122, the
15 statutory license under paragraph (2) shall
16 apply only to secondary transmissions by
17 that satellite carrier of the distant signal
18 of such network station to that sub-
19 scriber—

20 “(I)(aa) if, on such date of enact-
21 ment, the subscriber is receiving such
22 distant signal and is also receiving
23 such local signal, and

24 “(bb) the subscriber’s satellite
25 carrier, within 60 days after such date

1 of enactment, submits to that tele-
2 vision network a list, aggregated by
3 designated market area (as defined in
4 section 122(j)(2)(C)), that identifies
5 that subscriber by name and address
6 (street or RFD number, city, State,
7 and zip code) and specifies the distant
8 signals received by the subscriber; or

9 “(II)(aa) if, on such date of en-
10 actment, the subscriber is receiving
11 such distant signal and is not receiv-
12 ing such local signal; but

13 “(bb) only until such time as the
14 subscriber elects to receive such local
15 signal.

16 “(ii) In a case in which the signal of
17 a local network station affiliated with the
18 same television network is not made avail-
19 able by that satellite carrier, on the date of
20 the enactment of the Satellite Home View-
21 er Extension and Reauthorization Act of
22 2004, to a subscriber pursuant to the stat-
23 utory license under section 122, the statu-
24 tory license under paragraph (2) shall
25 apply only to secondary transmissions by

1 that satellite carrier of the distant signal
2 of such network station to any person—

3 “(I) who is subscriber of that
4 satellite carrier on such date of enact-
5 ment, or

6 “(II) who becomes a subscriber
7 of that satellite carrier after such date
8 but before the local signal is available,
9 but only until such time as the subscriber
10 elects to receive the local signal from that
11 satellite carrier.

12 “(C) FUTURE APPLICABILITY.—The statu-
13 tory license under paragraph (2) shall not apply
14 to secondary transmissions by a satellite carrier
15 of a primary transmission of a network station
16 to a subscriber in a location to which the signal
17 of a local network station affiliated with the
18 same television network was made available by
19 that satellite carrier, before that person became
20 a subscriber to that satellite carrier, pursuant
21 to the statutory license under section 122.

22 “(D) NULLIFICATION OF EXISTING WAIV-
23 ERS.—In the case of any subscriber to whom
24 subparagraph (B)(i)(II) or (B)(ii) applies, at
25 such time as the subscriber elects to receive the

1 local signal of a network station, any waiver by
2 that network station under section 339(c)(2) of
3 the Communications Act of 1934 shall cease to
4 be effective with respect to that subscriber.

5 “(E) OTHER PROVISIONS NOT AF-
6 FECTED.—This paragraph shall not affect the
7 applicability of the statutory license to sec-
8 ondary transmissions under paragraph (3) or to
9 unserved households included under subsection
10 (a)(12). ”.

11 (2) Subsection (b)(1) is amended by striking
12 subparagraph (B) and inserting the following:

13 “(B) a royalty fee for that 6-month period,
14 computed by multiplying the total number of
15 subscribers receiving each secondary trans-
16 mission of each superstation or network station
17 during each calendar month by the appropriate
18 rate in effect under this section.”.

19 (3) Subsection (b)(1) is further amended by
20 adding at the end the following flush sentence:

21 “Notwithstanding the provisions of subparagraph
22 (B), a satellite carrier whose secondary trans-
23 missions are subject to statutory licensing under
24 paragraph (1) or (2) of subsection (a) shall have no
25 royalty obligation for secondary transmissions to a

1 subscriber who resides outside the station's local
2 market (as defined in section 122(j)(2)) but within
3 a community in which the signal of that station is
4 determined to be significantly viewed under section
5 340 of the Communications Act of 1934.”.

6 (4) Subsection (c) is amended—

7 (A) by amending paragraph (1) to read as
8 follows:

9 “(1) APPLICABILITY AND DETERMINATION OF
10 ROYALTY FEES.—The appropriate rate for purposes
11 of determining the royalty fee under subsection
12 (b)(1)(B) shall be the appropriate rate set forth in
13 part 258 of title 37, Code of Federal Regulations, as
14 in effect on the date of the enactment of the Sat-
15 ellite Home Viewer Extension and Reauthorization
16 Act of 2004, as modified under this subsection.”;

17 (B) by striking paragraph (2);

18 (C) in paragraph (3)—

19 (i) by redesignating that paragraph as
20 paragraph (2);

21 (ii) in subparagraph (A)—

22 (I) by striking “January 1,
23 1997,” and inserting “January 1,
24 2005,”; and

1 (II) by striking “who are not
2 parties to a voluntary agreement filed
3 with the Copyright Office in accord-
4 ance with paragraph (2)”;

5 (iii) in subparagraph (C), by striking
6 “as provided” and all that follows through
7 “later” and inserting “January 1, 2006”;
8 and

9 (iv) by striking subparagraph (D);
10 and

11 (D) by striking paragraphs (4) and (5)
12 and inserting the following:

13 “(3) COST OF LIVING ADJUSTMENT.—The roy-
14 alty rates set forth in subsection (b)(1)(B), as ad-
15 justed under paragraph (2) of this subsection, shall
16 be adjusted by the Librarian of Congress—

17 “(A) on January 1, 2005, to reflect any
18 changes occurring during the period beginning
19 on January 1, 2000, and ending on November
20 30, 2004, in the cost of living as determined by
21 the most recent Consumer Price Index (for all
22 consumers and items) published by the Sec-
23 retary of Labor during that period; and

24 “(B) on January 1, 2007, and on January
25 1 of each year thereafter, to reflect any changes

1 occurring during the preceding 12 months in
2 the cost of living as determined by the most re-
3 cent Consumer Price Index so published.

4 “(4) REDUCTIONS.—The rate of the royalty fee
5 determined under paragraph (2)—

6 “(A) for superstations shall be reduced by
7 30 percent; and

8 “(B) for network stations shall be reduced
9 by 45 percent.”.

10 (5) Subsection (d) is amended—

11 (A) by amending paragraph (9) to read as
12 follows:

13 “(9) SUPERSTATION.—The term ‘superstation’
14 means a television broadcast station, other than a
15 network station, licensed by the Federal Commu-
16 nications Commission that is secondarily transmitted
17 by a satellite carrier.”;

18 (B) in paragraph (10)(D), by striking

19 “(a)(11)” and inserting “(a)(12)”; and

20 (C) by striking paragraph (12).

21 **SEC. 104. STUDY.**

22 No later than June 30, 2008, the Register of Copy-
23 rights shall report to the Committee on the Judiciary of
24 the House of Representatives and the Committee on the
25 Judiciary of the Senate the Register’s findings and rec-

1 ommendations on the operation and revision of the statu-
2 tory licenses under sections 111, 119, and 122 of title 17,
3 United States Code. The report should include, but not
4 be limited to, the following:

5 (1) A comparison of the royalties paid by licens-
6 ees under such sections, including historical rates of
7 increases in these royalties, a comparison between
8 the royalties under each such section and the prices
9 paid in the marketplace for comparable program-
10 ming.

11 (2) An analysis of the differences in the terms
12 and conditions of the licenses under such sections,
13 an analysis of whether these differences are required
14 or justified by historical, technological, or regulatory
15 differences that affect the satellite and cable indus-
16 tries, and an analysis of whether either the cable or
17 satellite industry is placed in a competitive disadvan-
18 tage due to these terms and conditions.

19 (3) An analysis of whether the licenses under
20 such sections are still justified by the bases upon
21 which they were originally created.

22 (4) An analysis of the correlation, if any, be-
23 tween the royalties, or lack thereof, under such sec-
24 tions and the fees charged to cable and satellite sub-
25 scribers, addressing whether cable and satellite com-

1 panies have passed to subscribers any savings real-
2 ized as a result of the royalty structure and amounts
3 under such sections.

4 **SEC. 105. EFFECT ON CERTAIN PROCEEDINGS.**

5 Nothing in this Act shall modify any remedy imposed
6 on a party that is required by a final judgment of a court
7 in any action that was brought before May 1, 2004,
8 against that party for a violation of section 119 of title
9 17, United States Code.

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